



www.cjc.gc.ca

Canadian Judicial Council

SUBMISSIONS ON BILL C-337

Judicial Accountability through Sexual Assault Law Training Act

20 April 2017

Canadian Judicial Council
Submissions on Bill C-337

Introduction

1. The CJC is pleased to have an opportunity to comment on Bill C-337, the *Judicial Accountability through Sexual Assault Law Training Act*.
2. Under the *Judges Act*, the CJC has the authority to establish seminars for the continuing education of judges.
3. In keeping with established principles of judicial independence, control over education programs for judges must remain within the judiciary itself. The separation of powers between the executive legislative and judicial branches of government rightly ensures that the first two branches respect the independence of the third.
4. This does not mean that the judiciary is unaccountable. On the contrary, the judiciary has a clear duty to be accountable to the public through the principle of open courts and the publicity of judgements. For judicial education and judicial discipline for federally appointed judges, the accountability rests with the Canadian Judicial Council, which is composed of the Chief Justices and other senior judges of our superior courts.
5. The rule of law depends on public confidence in our institutions, including the judiciary. The CJC is aware that the Bill is a consequence of important questions that have recently been raised in Canada with respect to judicial education.
6. The CJC takes this matter extremely seriously and wants to work collaboratively with all stakeholders, including Parliamentarians, in moving forward. We must take care, however, not to create an improper expectation that judicial education can be directed by Parliamentarians. We must remain alert to the constitutional limits in this important area.

7. The CJC has taken a leadership role, since the 1990's, to require social context education in all its key programs to ensure that judges – and in particular newly appointed judges – are aware of the challenges faced by vulnerable groups in society.
8. To engage in social context education is to learn about people and their problems and to ensure that myths and stereotypes do not influence judicial decision-making.
9. As noted in a recent CJC report, “Canadians expect their judges to know the law but also to possess empathy and to recognize and question any past personal attitudes and sympathies that might prevent them from acting fairly.”
10. This is why the CJC has adopted, for some 20 years, a comprehensive approach to judicial education, to ensure that judges acquire and maintain the highest degree of knowledge about the law, as well as about social challenges.
11. In this context, the CJC offers some suggestions about the proposed legislation.

Education About Sexual Assault Issues

12. The CJC supports the objectives sought to be accomplished by section 2 of the Bill. However, the CJC would propose an approach that, in our view, would be more effective and efficient.
13. The proposed provision would require that any candidate for appointment as a superior court judge have completed “recent and comprehensive” education in sexual assault law.
14. The CJC proposes, as an alternative, that applicants for appointment as a superior court judge commit, as part of the application process, to abide by CJC policies in respect of judicial education and, specifically, to undertake to participate in ongoing social context education, including education on sexual assault issues.

15. CJC policies now provide that it is mandatory for newly appointed judges to attend a seminar designed for new judges, which includes education on sexual assault issues as part of the social context component of the program. CJC policies also provide that judges should devote 10 days per year to continuing education.
16. The proposal for asking candidates for the judiciary to commit to abide by CJC policies, as part of the application process, has been made to the Minister of Justice.
17. In our view, these proposals would achieve the desired objectives of the Bill and extend the eventual scope to all federally-appointed judges.

Amending paragraph 60(2)(b) of the *Judges Act*

18. The CJC is concerned that this provision, although worded permissively, may be interpreted as a requirement set by one branch of government regarding training requirements for judges. This would raise a concern in terms of the independence of the judiciary, particularly if one considers the consequences for a judge who fails to fulfill their obligations to maintain and enhance their knowledge and skills to ensure they discharge the duties of their office. Those consequences are for the judiciary to address.
19. The CJC has adopted, over the years, a comprehensive approach to judicial education.
20. Sexual assault cases are some of the most complex and difficult matters heard by the courts. Comprehensive education on sexual assault matters, including social context on gender equality, poverty and intersectionality of gender inequality are part of a comprehensive approach to judicial education that presently exists. This approach to education goes beyond the substantive law – it's about challenging attitudes that judges may be unaware they hold.
21. Further, there are other very important issues that the judiciary now faces and which the CJC is addressing through a comprehensive judicial education approach, including aboriginal issues, racism, poverty and the challenges of self-represented litigants.

22. The CJC is constantly re-evaluating the effectiveness of judicial education programs and will continue to do so, with the participation of experts and community groups.

Report on Sexual Assault Seminars

23. The proposals at section 4 of the Bill would increase transparency about the scope and nature of judicial education programs. The CJC supports enhanced transparency in this area and, with a planned increase in its budget, is proposing to publish henceforth the following information in its annual reports:
 - a. Title, description and overview of all education seminars approved by the CJC in the preceding year;
 - b. Dates and duration of each seminar;
 - c. Number of judges who attended each seminar.
24. The CJC is concerned that any requirement to identify, directly or indirectly, which judges participated in which courses could be problematic.
25. In particular, proposed paragraph 62.1(c) proposes that the number of judges who never participated in a sexual assault law seminar and who heard a sexual assault case be identified for each of Canada's superior courts.
26. The logical outcome of gathering such data would be to identify specific judges, over the long term, for purposes of drawing conclusions about the nature of the decisions they issue in sexual assault cases. This is, in other words, a judicial performance evaluation tool based on an assumption that attendance at a course guarantees competence.
27. Without discussing here the issue of judicial performance evaluation, it must be noted that court decisions are subject to review by appellate tribunals. The conduct of judges – including their competence – is subject to review by the CJC. This is how judicial competence and transparency are ensured.

28. The CJC is unable to support a proposed reporting requirement that would identify the courts and the number of judges from these courts that participate in specific education programs and who hear or do not hear specific types of cases. We are of the view that such a requirement would infringe on the judiciary's independence to maintain control over judicial education and judicial discipline matters.

Requirement for Oral Reasons

29. The CJC shares the views expressed by the Canadian Bar Association in its April 2017 Submission to the Committee on Bill C-337.

Further Study

30. The CJC would be pleased to assist the Committee in any further study of the proposed legislation.